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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,633	07/03/2003	Eric M. Weaver	P03592US03	4613
22885	7590	01/24/2006	EXAMINER	
MCKEE, VOORHEES & SEASE, P.L.C. 801 GRAND AVENUE SUITE 3200 DES MOINES, IA 50309-2721			KIM, YUNSOO	
			ART UNIT	PAPER NUMBER
			1644	

DATE MAILED: 01/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/613,633

Applicant(s)

WEAVER ET AL.

Examiner

Yunsoo Kim

Art Unit

1644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 9-18,20 and 21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9-18,20-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>7/3/03</u> . | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. Claims 9-18, 20 and 21 are pending.  
Claims 9, 20 and 21 have been amended.  
Claim 19 has been canceled.
2. Applicants' IDS filed on 7/3/03 has been acknowledged.
3. Upon Applicant's amendments to the claims, the objections and rejection under the second paragraph of 35 U.S.C. 112 (sections 4-8) set forth in the office action mailed 5/2/05 have been withdrawn.
4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:  
A person shall be entitled to a patent unless –  
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
5. Claims 9-18 and 20-21 stand rejected under 35 U.S.C. 102(b) as being anticipated by Newson et al. (U.S. Pat. No. 4,096,244, of record) for the reasons set forth in the office action mailed 5/2/05.

Applicants' amendments to the claims and arguments filed on 11/2/05 have been fully considered but they are not persuasive.

Applicants' traversed the rejection based on the composition taught in the '244 patent is not identical to the claimed invention because of the source of the referenced immunoglobulin is from serum not from the plasma as in the claimed invention. Applicants' further argued that improving weight gain would not be inherent property.

It is well known in the art that the plasma is different from serum as the plasma contains fibrin and other soluble clotting element. The referenced water soluble immunoglobulin was obtained from defibrinated plasma (i.e. serum, Example 1-2, col. 3, lines 7-19) after treatment with calcium chloride.

Art Unit: 1644

This defibrinated plasma is the source for the claimed water soluble immunoglobulin (p. 12-13, Example 4, p. 25 of the specification). Thus, contrary to the applicants' arguments, the referenced immunoglobulin and the claimed immunoglobulin are identical.

Furthermore, the newly added limitation of "to an animal at any stage of the animal's life" does not exclude the post weaning and newborn piglets, thus the patient population remains identical.

Thus, the claimed functional limitation (improving weight gain) would be inherent property of the referenced formulation. The reference composition is applied to the identical population as in claimed invention.

Thus, prior art teachings anticipate the instant claimed invention.

6. No claims are allowable.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Art Unit: 1644

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yunsoo Kim whose telephone number is 571-272-3176. The examiner can normally be reached on Monday thru Friday 8:30 - 5:00PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Chan can be reached on 571-272-0841. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Yunsoo Kim  
Patent Examiner  
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January 11, 2006

  
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